BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 328 1993

Bill H 228 S _____ Original bill & history ____C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 12	✓ C	Hearing Date(s) Mar 18	✓ C
Feb 16	✓ C	Mar 26	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Feb 19	✓ C	Mar 26	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/25	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
1/29	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	REVISED FISCAL NOTE REQUESTED		
2/19	REVISED FISCAL NOTE RECEIVED		
2/20	REVISED FISCAL NOTE PRINTED		
2/22	TAKEN FROM 2ND READING AND REREFERRED TO APPROPRIATIONS	53	46
3/03	REVISED FISCAL NOTE REQUESTED BY SPONSOR		
3/03	SPONSOR-REQUESTED FISCAL NOTE RECEIVED		
3/03	SPONSOR-REQUESTED FISCAL NOTE PRINTED		
3/03	TABLED IN COMMITTEE		

HB 228 INTRODUCED BY TOOLE, ET AL.

REPLACE REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT WITH UNIFORM INTERSTATE FAMILY SUPPORT ACT

1/19	INTRODUCED		
1/19	REFERRED TO JUDICIARY		
1/19	FIRST READING		
2/12	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	90	7
2/22	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO JUDICIARY		
3/18	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
3/30	2ND READING CONCURRED	50	0
3/31	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/08	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR CHAPTER NUMBER 328 EFFECTIVE DATE: 10/01/93		

HB 229 INTRODUCED BY HARRINGTON,ET AL.

ALLOW RESIDENT OF LONG-TERM CARE FACILITY RIGHT TO CHOOSE PHARMACY

1/19	INTRODUCED		
1/19	REFERRED TO HUMAN SERVICES & AGING		
1/19	FIRST READING		
2/03	HEARING		
2/25	MISSED TRANSMITTAL DEADLINE		

HB 230 INTRODUCED BY WINSLOW

AUTHORIZE LOCAL GOVERNMENT TO CREATE CASH OVER OR SHORT ACCOUNT

1/19	INTRODUCED		
1/19	REFERRED TO LOCAL GOVERNMENT		
1/19	FIRST READING		
1/28	HEARING		
1/30	COMMITTEE REPORT—BILL PASSED		
1/30	PLACED ON CONSENT CALENDAR		
2/03	3RD READING PASSED	95	2

pay support.

REP. DIANA WYATT asked **Mr. McCray, Staff Attorney, Child Support Enforcement Services**, to discuss the study of lien effects with the committee. **Mr. McCray** said there has been a considerable number of studies in other states having to do with liens as a tool. The lien process in Montana has not been very effective. Federal programs require states to have liens upon personal property. Montana presently already has that in the system but is trying to borrow ideas from other states to make that use easier to apply.

REP. LIZ SMITH said the lien law is already in existence, and this bill simply enhances that opportunity. She asked **Mr. McCray** specifically what the intention of this bill is. **Mr. McCray** said there are many different opportunities for hearings, and CSES is making the lien available anytime they reduce the child support obligation to some certain amount. That's the primary emphasis. Right now, in order to get the lien, CSES must duplicate the same hearing process.

Regarding banking institutions, the right to privacy is held in very high regard, especially in law enforcement circles.

Closing by Sponsor: None.

HEARING ON HB 228

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, said this bill will improve the law on reciprocal enforcement of support to be broader and closer in line with the national trend for collection of child support. **REP. TOOLE** presented amendments. **EXHIBIT 15**

Proponents' Testimony:

John McCray, Staff Attorney, Child Support Enforcement Services, said there were weaknesses in the original bill. One of those problems is that when a person moves to another state, the state is not bound by the original support order. When an individual runs from state to state, it is possible to have from 6 to 12 conflicting orders. Jurisdictional conflicts cause a tremendous amount of litigation. The Interstate Commission visited various states and state health public hearings on how to handle this problem, and this bill is the resolution. When the bill was originally drafted, it was generic in its terms, and it didn't allow for states like Montana with a dual enforcement system, a court-based enforcement system, and an administrative-based enforcement system. Several revisions and amendments have been made to the original commission rights to incorporate the

separation of the functions. Afterwards, the Uniform Commissioners reviewed the draft to make sure it used standardized language between all the states. **REP. TOOLE** has further cleanup amendments. The major change is the separation of the administration system from the court system (two parallel systems).

Wilbur Johnson, Johnson Advocacy, Great Falls, presented written testimony. **EXHIBIT 16**

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. DAVE BROWN said most uniform laws are designed to be the same in all states. He asked **REP. TOOLE** where this one came from and whether it is exactly like the laws in effect and proposed across the country. **REP. TOOLE** said that, with the amendments, this draft is approved as being a uniform law. He conveyed that the drafting of HB 228 was done by **Greg Petesch, Legal Services Director, Legislative Council.** After that, the first draft was reviewed by the Uniform Act Commissioners. The commissioners wanted to bring the bill back to its original format, and they improved it with the amendments.

REP. BROWN referred to the word "tribunal" on page 7, line 25 and asked if that definition is cast in concrete. **Mr. McCray** explained why tribunal is used in the bill. He said CSES presently has interstate applications that are administratively processed.

Closing by Sponsor: None

HEARING ON HB 496

Opening Statement by Sponsor:

REP. DIANA WYATT, House District 37, Great Falls, said there are no real substantive changes in this bill. The only substantive change is replacing the term "handicapped person" to "person with a disability."

Proponents' Testimony:

David M. Rusoff, Attorney, Human Rights Commission, presented written testimony. **EXHIBIT 17**

Opponents' Testimony: None

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE Jan 12, 93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell			✓
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

EXHIBIT # 15
DATE 2-12-93
HB 228

Amendments to House Bill No. 228
First Reading Copy

Requested by Representative Toole
For the Committee on Judiciary

Prepared by Greg Petesch
February 9, 1993

1. Title, line 11.
Following: "SECTIONS"
Insert: "40-4-210,"

2. Title, line 13.
Following: "40-5-142,"
Insert: "40-5-202, 40-5-226, 40-5-231, 40-5-263,"
Following: "40-5-272,"
Strike: "AND"

3. Title, line 14.
Following: "40-5-431,"
Insert: "AND 40-6-109,"

4. Page 1, line 20.
Following: line 19
Insert: "WHEREAS, the United States Commission on Interstate Child Support and the National Conference of Commissioners on Uniform State Laws intend [section 21] to require a state support enforcement agency, in a Uniform Interstate Family Support Act (UIFSA) proceeding, to provide locator services upon the request of any individual; and

WHEREAS, the Department of Social and Rehabilitation Services is charged under [section 21] with providing locate services and does not receives a state general fund appropriation for providing locator services; and

WHEREAS, in enacting [section 21] the Legislature of the State of Montana intends the Department of Social and Rehabilitation Services to establish a fee schedule under 40-5-210 for locator services provided to an individual under [section 21]."

5. Page 3, lines 21 and 22.
Following: "part" on line 21
Strike: remainder of line 21 through "," on line 22

6. Page 3, line 24.
Strike: "or"

7. Page 3, line 25.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

8. Page 4, line 22.
Strike: ","
Insert: "or"

9. Page 4, line 24 through page 5, line 1.
Following: "obligee" on page 4, line 24
Strike: remainder of page 4, line 24 through "Act" on page 5, line 1

10. Page 5, line 4.
Following: "individual"
Strike: remainder of line 4

11. Page 5, lines 6 and 7.
Following: the first "child" on line 6
Strike: remainder of line 6 through "Act" on line 7

12. Page 5, lines 19 through 21.
Following: "." on line 19
Strike: remainder of line 19 through line 21 in their entirety

13. Page 6, lines 6 through 8.
Following: "part" on line 6
Strike: remainder of line 6 through "Act," on line 8

14. Page 6, line 9.
Strike: "or"

15. Page 6, line 10.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

16. Page 7, line 22.
Strike: "health insurance,"

17. Page 8, lines 5 through 11
Following: "." on line 5.
Strike: strike remainder of line 5 through line 11 in its entirety

18. Page 11, lines 9 through 13.
Strike: subsection (3) in its entirety

19. Page 12, lines 7 and 8.
Following: "state" on line 7
Strike: remainder of line 7 through "with" on line 8
Insert: "pursuant to a law substantially similar to"

20. Page 12, lines 20 and 21.
Following: "has" on line 20
Strike: remainder of line 20 through "has" on line 21

EXHIBIT #16
DATE 2-12-93
HB-228

21. Page 13, lines 15 through 18.
Following: "(2)" on line 15
Strike: remainder of line 15 through "." on line 18

22. Page 14, lines 2 and 3.
Following: "(3)" on line 2
Strike: remainder of line 2 through ", a" on line 3
Insert: "A"

23. Page 14, line 4.
Following: "state"
Insert: "that lacks continuing, exclusive jurisdiction over a spousal support order"

24. Page 16, lines 1 and 2.
Following: "~~person~~" on line 1
Strike: remainder of line 1 through "to" on line 2

25. Page 16, lines 6 and 7.
Following: "~~person~~" on line 6
Strike: remainder of line 6 through "to" on line 7

26. Page 19, line 9.
Strike: "obligee"
Insert: "individual"

27. Page 20, line 8.
Following: "~~the~~"
Insert: "(1)"

28. Page 20, line 16.
Strike: "(1)"
Insert: "(a)"

29. Page 20, line 21.
Strike: "(2)"
Insert: "(b)"

30. Page 21, line 4.
Following: "."
Insert: "(2) The department of social and rehabilitation services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4[, and 5]. In all other cases, the district court is the initiating tribunal."

31. Page 21, lines 9 through 12.
Following: "shall" on line 9
Strike: remainder of line 9 through "," on line 12

32. Page 23, line 4.
Following: "."
Insert: "(6) The department of social and rehabilitation services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided

in 40-5-263. In all other cases, the district court is the responding tribunal."

33. Page 24, line 2.
Following: "tribunal,"
Insert: "promptly"

34. Page 24, line 5.
Following: "attorney,"
Insert: "promptly"

35. Page 24, line 9.
Following: "create"
Insert: "or negate"

36. Page 24, line 13.
Following: line 12
Insert: "(4) For purposes of this part, the department of social and rehabilitation services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4[, and 5]. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

37. Page 25, line 3.
Strike: "and"

38. Page 25, line 6.
Following: "states"
Insert: ";"

39. Page 25, line 12.
Strike: "."

40. Page 26.
Following: line 7
Insert: "(3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

41. Page 26, line 24.
Strike: "obligee"
Insert: "individual"

42. Page 27, line 3.
Strike: "obligee"
Insert: "individual"

43. Page 27, lines 4 and 5.
Strike: "obligee"
Insert: "individual"

44. Page 27, lines 23 and 24.
Following: "a" on line 23
Strike: remainder of line 23 through "Act" on line 24
Insert: "support enforcement"

45. Page 28, lines 9 through 11.
Following: "(1)" on line 9
Strike: remainder of line 9 through "40-5-210" on line 11
Insert: "The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part"

46. Page 28, line 12.
Strike: "In all other cases, if"
Insert: "If"

47. Page 29, line 6.
Following: line 5
Insert: "(4) The standardized schedule of fees established by the department of social and rehabilitation services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

48. Page 29, lines 8 and 9.
Strike: "finally" on line 8
Insert: "previously"
Following: "determined" on line 8
Strike: remainder of line 8 through "or" on line 9

49. Page 29, lines 18 and 19.
Following: "forms" on line 18
Strike: remainder of line 18 through "agencies" on line 19

50. Page 30, line 15.
Strike: "an appropriate"
Insert: "a"

51. Page 31, line 25.
Strike: "authorized by law to receive support payments"

52. Page 32, line 2.
Following: "order"

Insert: "as directed under this part"
Following: "or"
Strike: "appropriate"

53. Page 33, lines 2 through 4.
Following: "(1)" on line 2
Strike: remainder of line 2 through ", a" on line 4
Insert: "A"

54. Page 33, line 7.
Strike: "the department"
Insert: "a support enforcement agency of this state"

55. Page 33, line 8.
Strike: "department"
Insert: "support enforcement agency"

56. Page 33, lines 16 and 17.
Strike: "department" on line 16
Insert: "support enforcement agency"
Following: "to" on line 16
Strike: remainder of line 16 through "4" on line 17
Insert: "this part"

57. Page 34, line 22 through page 35, line 1.
Following: "state" on page 34, line 22
Strike: remainder of line 22 through "cases" on page 35, line 1
Renumber: subsequent subsections

58. Page 35, line 2.
Strike: "clerk of"
Insert: "department of social and rehabilitation services pursuant to 40-5-263 or to"
Following: "the"
Insert: "district"

59. Page 44, line 15.
Strike: "and enforce"

60. Page 44, lines 16 and 17.
Strike: "request or" on line 16
Following: "registration"
Strike: remainder of line 16 through "part" on line 17
Insert: ", for the purpose of enforcement"

61. Page 45, lines 4 through 9.
Following: "law" on line 4
Strike: remainder of line 4 through "1" on line 9

62. Page 45, line 10.
Following: line 9
Insert: "(3) A proceeding to determine parentage directed to:
(a) the department of social and rehabilitation services from an initiating state pursuant to 40-5-263 and this part is

EXHIBIT #15
DATE 2-12-93
HB 228

prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of ~~his~~ the father's estate have been or could be commenced.""
Renumber: subsequent sections

66. Page 49, line 3.
Following: line 2
Insert: "
NEW SECTION. **Section 60. Coordination.** If neither Senate Bill No. 217 nor __ Bill No. __ [LC 969] is passed and approved, then the bracketed language in [section 16(3) and section 21(4)] is void and the code commissioner shall make necessary changes in grammar."
Renumber: subsequent section

DATE 2-12-93
HB 228

What I am trying to do with this testimony and purposed legislation? It is quite evident by what has happened since the child support law went into effect in August of 1985. That says, that the State of Montana can take up to 50% of your wages, that is if you owe back child support. Regardless of what you make, the State of Montana does not have to leave you anything to live on. The State of Montana's attitude was, and still remains that they do not care how many people become homeless, just as long as they get their money. By January, I hope to have enough correspondence on the issue of child support, to prove just how devastating this law has become. How many lives have become ruined, and to show just how many families have been broken up over the issue of child support enforcement. I know first hand, what some of the circumstances are, as I have went through some of the same things myself. Do any of you know what degradation that we have to go through? Do any of you really care? Just as long as it does not effect you personally. It is my opinion that the State of Montana, in fact does not care in the least, as we are only low-income or working poor people.

What am I trying to do with my purposed legislation? I am trying to keep a lot of people from needlessly becoming homeless. First, if a man becomes homeless because he can not pay his child support. What becomes of his ex-wife and children? Usually, the ex-wife and children end up on AFDC. Or the worse kind of scenario possible, the family ends up on the street homeless, along with the man that could not pay his child support. So, all in all the law creates more problems than it solves, in some cases. Most of us fathers and mothers that pay child support are not dead beats. We want to pay child support, but due to circumstances beyond our control in some cases, we do not make enough money to live on, let alone pay child support. Most of us fathers and mothers try to live up to our obligations of paying child support. Granted, there are some fathers and mothers that are dead beats.

resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or ~~his~~ the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter."

Section 57. Section 40-6-109, MCA, is amended to read:

"**40-6-109. Jurisdiction -- venue.** (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over ~~any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure~~ an individual or the individual's guardian or conservator, if:

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering an general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided

subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

63. Page 45, line 25.
Following: ";"
Insert: "or"

64. Page 46, lines 2 through 5.
Strike: line 2 through "order" on line 5
Insert: "40-5-231"

65. Page 48, line 15.
Following: line 14
Insert: "Section 52. Section 40-4-210, MCA, is amended to read:

"40-4-210. Child support jurisdiction -- nonresident ~~parent~~ individual. A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident ~~parent~~ individual or the individual's guardian or conservator in a child support determination in the initial or modification decree if:

(1) the ~~nonresident parent has resided with the child in~~ individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(2) ~~(a)~~ the ~~nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and~~

~~(b) the other party to the marital relationship or~~ individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(3) the individual has resided with the child ~~resides~~ within this state;

~~(3)~~ (4) the child was ~~conceived or~~ adopted within this state when at least one parent was a resident; ~~or~~

(5) the individual resided in this state and provided prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

~~(i)~~(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction."

Section 53. Section 40-5-202, MCA, is amended to read:

"**40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt.** (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure that the parent or other person responsible pays for the care, support, or maintenance of a child if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part. ~~No~~ An obligee may not act to prejudice the rights of the department while ~~such~~ services are being provided.

(5) If child support enforcement services are being or have been provided under this part, ~~no~~ an agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any

administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 54. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- ~~place -- time~~ -- determinations -- failure to appear -- entry of final decision and order. 1) The administrative hearing is defined as a "contested case".

(2) ~~At the discretion of the hearing officer, the administrative hearing may be held:~~

~~(a) in the county of residence or other county convenient to the obligor or obligee; or~~

~~(b) in the county in which the department or any of its offices are located.~~

~~(3)~~ If a hearing is requested, it must be scheduled within 20 days.

~~(4)~~(3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ the determination.

~~(5)~~(4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

~~(6)~~(5) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

~~(7)~~(6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

~~(8)~~(7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

~~(9)~~(8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

~~(10)~~(9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

~~(11)~~(10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

~~(12)~~(11) For the purposes of income withholding provided for in subsection ~~(11)~~ (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's

current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

Section 55. Section 40-5-231, MCA, is amended to read:

"**40-5-231.** ~~**Establishment of paternity -- jurisdiction**~~ **Jurisdiction and venue.** (1) For purposes of an administrative action brought under ~~40-5-231 through 40-5-237~~ this part, personal jurisdiction is established in the department over any ~~person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father~~ individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of

intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the ~~persons~~ individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under ~~40-5-231 through 40-5-237~~ this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located."

Section 56. Section 40-5-263, MCA, is amended to read:

"**40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the department.** (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status

and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor

Jones/01

31T H/16
2-12-93
HB-328

Mr. Chairman, I would like to include something that is not in my original testimony.

I have a guaranteed student loan that I have not been able to pay on for two years, because of this child support issue. Will I end up by going to jail? Just because I can not pay on the loan.

I would like to offer a challenge to any legislator in the state, and that is. Sometime when you want a real startling experience, sit down and take off your shoes,and step into the shoes of a low-income, or working poor person, that has to deal with child support enforcement. I guarantee you, it will be a rude awakening to some. And to some, it will literally scare the hell out of you, finding out some of the conditions that we have to live under..

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 228

DATE Feb. 12, 1993 SPONSOR(S) H Toole

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
[illegible]	CSED	X	
Linus Carlton	SRS/CSED	X	
Wilbur Johnson Box 617 Great Falls	Johnson Advocacy Great Falls Service		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

REP. GRIMES said he believes in clear, supervisory levels; he thinks a lot of these issues can be solved through agreements. He does not think this issue should be in statute and could be solved though agreements.

REP. WYATT said she is concerned that the non-informed consumer will be hurt by this bill. They have no way of telling the difference between an owner or associate unless a person is educated in that area. She strongly opposes the bill.

REP. BIRD asked whether the Board of Realty Regulators has rule-making authority to advise this supervision issue. **Mr. MacMaster** said that, while the Board of Realty Regulators has rule-making authority, they can't adopt a rule unless the rule relates to specific statute. There would have to be a statute saying that the broker/owner does not have the duty to supervise.

Vote: **HB 466 TO BE TABLED.** Motion carried 11-6. Those voting no were **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, RICE,** and **SMITH. REP. WINSLOW** was excused from voting.

EXECUTIVE ACTION ON HB 228

Motion: **REP. TOOLE MOVED HB 228 DO PASS AS AMENDED.**

Discussion:

REP. TOOLE said this bill was sent to him by **Child Support Enforcement Services (CSES)** before the session began. There are very few differences between this bill with these amendments and the actual uniform laws. **REP. TOOLE** doesn't think there's anything substantive in the bill.

REPS. BROWN and **VOGEL** expressed concern that a uniform law shouldn't require 17 pages of amendments after two rewrites. They are not comfortable voting on this bill.

REP. TOOLE said the amendments were prepared to bring the bill back to uniform law. **REP. TOOLE** received a letter from **John McCabe, Uniform Laws Commission in Chicago,** stating that he had reviewed the amendments and was satisfied that the amendments would make the bill uniform law again.

REP. TASH asked **Mr. MacMaster** if he or **Greg Petesch, Legislative Council,** wrote the amendments for **REP. TOOLE. Mr. Petesch** wrote the amendments, and every sentence does track the uniform laws. **Mr. MacMaster** thought it was important for the committee to know that **Mr. Petesch** is one of the Montana Uniform Law Commissioners.

CHAIRMAN FAGG asked **REP. TOOLE** why the original uniform law was changed. **REP. TOOLE** said when he was asked to introduce the bill, he thought it was necessary and important to get the CSES

people involved with drafting the bill to adapt to the uniform laws.

Motion/Vote: REP. TOOLE moved the amendments. Motion carried unanimously.

Motion/Vote: REP. TOOLE MOVED HB 228 DO PASS AS AMENDED. Motion carried 15-3 with REPS. CLARK, TASH and VOGEL voting no.

EXECUTIVE ACTION ON HB 335

Motion: REP. TOOLE MOVED HB 335 DO PASS.

Discussion:

REP. TOOLE explained that HB 335 makes a number of changes in existing child support laws that provide for a lien procedure or forfeiture of personal property; it allows for child support to be paid to the child's relative if he or she is a shared guardian and is aware of child support payments. The only opposition to this bill is based on concern about subpoenas and orders, and that was discussed in the February 12 hearing (see February 12 minutes).

REP. BIRD referred to page 23, section 12, and asked REP. TOOLE if this language will infringe upon the Privacy Act. REP. TOOLE said implications available from CSES pointed out that those privacy provisions did not impact state agencies which are allowed to see the information; if the bill passes, it will not infringe on the Privacy Act. REP. BIRD asked for Mr. MacMaster's opinion. Mr. MacMaster stated that, while that has been mentioned as a problem, he didn't know if it was or not. He has heard that the federal government forbids these financial lending institutions from giving out this information. CHAIRMAN FAGG said that the amendment by MIB addresses REP. BIRD'S concern.

Motion: REP. FAGG moved the amendment by Montana Independent Bankers.

Discussion:

REP. BROWN said he believes the language proposed by MIB is preferable than the amendments proposed by REP. TOOLE in the effort to solve the situation. Basically, the information must still be given, but it absolves that person from any liability that might accrue for divulging the information.

REP. TOOLE prefers his amendment rather than MIB's, because their amendment requires the court to get an investigative subpoena. He said he is concerned about several issues. First, the bank would have to go to court to initiate an investigation; and secondly, the court would give an order to the bank rather than a request for information. CSES agreed with the suggestion that

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-16-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow			✓
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 228 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 11.
Following: "SECTIONS"
Insert: "40-4-210,"

2. Title, line 13.
Following: "40-5-142,"
Insert: "40-5-202, 40-5-226, 40-5-231, 40-5-263,"
Following: "40-5-272,"
Strike: "AND"

3. Title, line 14.
Following: "40-5-431,"
Insert: "AND 40-6-109,"

4. Page 1, line 20.
Following: line 19
Insert: "WHEREAS, the United States Commission on Interstate Child Support and the National Conference of Commissioners on Uniform State Laws intend [section 21] to require a state support enforcement agency, in a Uniform Interstate Family Support Act (UIFSA) proceeding, to provide locator services upon the request of any individual; and

WHEREAS, the Department of Social and Rehabilitation Services is charged under [section 21] with providing locator services and does not receive a state general fund appropriation for providing locator services; and

WHEREAS, in enacting [section 21] the Legislature of the State of Montana intends the Department of Social and Rehabilitation Services to establish a fee schedule under 40-5-210 for locator services provided to an individual under [section 21]."

Committee Vote:
Yes ___, No ___.

5. Page 3, lines 21 and 22.
Following: "part" on line 21
Strike: remainder of line 21 through "," on line 22

6. Page 3, line 24.
Strike: "or"

7. Page 3, line 25.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

8. Page 4, line 22.
Strike: ","
Insert: "or"

9. Page 4, line 24 through page 5, line 1.
Following: "obligee" on page 4, line 24
Strike: remainder of page 4, line 24 through "Act" on page 5, line 1

10. Page 5, line 4.
Following: "individual"
Strike: remainder of line 4

11. Page 5, lines 6 and 7.
Following: the first "child" on line 6
Strike: remainder of line 6 through "Act" on line 7

12. Page 5, lines 19 through 21.
Following: "." on line 19
Strike: remainder of line 19 through line 21 in their entirety

13. Page 6, lines 6 through 8.
Following: "part" on line 6
Strike: remainder of line 6 through "Act," on line 8

14. Page 6, line 9.
Strike: "or"

15. Page 6, line 10.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

16. Page 7, line 22.
Strike: "health insurance,"

17. Page 8, lines 5 through 11
Following: "." on line 5.
Strike: strike remainder of line 5 through line 11 in its entirety

18. Page 11, lines 9 through 13.
Strike: subsection (3) in its entirety

19. Page 12, lines 7 and 8.
Following: "state" on line 7
Strike: remainder of line 7 through "with" on line 8
Insert: "pursuant to a law substantially similar to"

20. Page 12, lines 20 and 21.
Following: "has" on line 20
Strike: remainder of line 20 through "has" on line 21

21. Page 13, lines 15 through 18.
Following: "(2)" on line 15
Strike: remainder of line 15 through "." on line 18

22. Page 14, lines 2 and 3.
Following: "(3)" on line 2
Strike: remainder of line 2 through ", a" on line 3
Insert: "A"

23. Page 14, line 4.
Following: "state"
Insert: "that lacks continuing, exclusive jurisdiction over a spousal support order"

24. Page 16, lines 1 and 2.
Following: "~~person~~" on line 1
Strike: remainder of line 1 through "to" on line 2

25. Page 16, lines 6 and 7.
Following: "~~person~~" on line 6
Strike: remainder of line 6 through "to" on line 7

26. Page 19, line 9.
Strike: "obligee"
Insert: "individual"

27. Page 20, line 8.
Following: "~~the~~"
Insert: "(1)"

28. Page 20, line 14.
Strike: "(1)"

Insert: "(a)"

29. Page 20, line 21.
Strike: "(2)"
Insert: "(b)"

30. Page 21, line 4.
Following: "."
Insert: "(2) The department of social and rehabilitation services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4[, and 5]. In all other cases, the district court is the initiating tribunal."

31. Page 21, lines 9 through 12.
Following: "shall" on line 9
Strike: remainder of line 9 through "," on line 12

32. Page 23, line 4.
Following: "."
Insert: "(6) The department of social and rehabilitation services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

33. Page 24, line 2.
Following: "tribunal,"
Insert: "promptly"

34. Page 24, line 5.
Following: "attorney,"
Insert: "promptly"

35. Page 24, line 9.
Following: "create"
Insert: "or negate"

36. Page 24, line 13.
Following: line 12
Insert: "(4) For purposes of this part, the department of social and rehabilitation services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4[, and 5]. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

37. Page 25, line 3.
Strike: "and"

38. Page 25, line 6.
Following: "states"
Insert: ";"

39. Page 25, line 12.
Strike: "."

40. Page 26.
Following: line 7
Insert: "(3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

41. Page 26, line 24.
Strike: "obligee"
Insert: "individual"

42. Page 27, line 3.
Strike: "obligee"
Insert: "individual"

43. Page 27, lines 4 and 5.
Strike: "obligee"
Insert: "individual"

44. Page 27, lines 23 and 24.
Following: "a" on line 23
Strike: remainder of line 23 through "Act" on line 24
Insert: "support enforcement"

45. Page 28, lines 9 through 11.
Following: "(1)" on line 9

Strike: remainder of line 9 through "40-5-210" on line 11
Insert: "The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part"

46. Page 28, line 12.
Strike: "In all other cases, if"
Insert: "If"

47. Page 29, line 6.
Following: line 5
Insert: "(4) The standardized schedule of fees established by the department of social and rehabilitation services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

48. Page 29, lines 8 and 9.
Strike: "finally" on line 8
Insert: "previously"
Following: "determined" on line 8
Strike: remainder of line 8 through "or" on line 9

49. Page 29, lines 18 and 19.
Following: "forms" on line 18
Strike: remainder of line 18 through "agencies" on line 19

50. Page 30, line 15.
Strike: "an appropriate"
Insert: "a"

51. Page 31, line 25.
Strike: "authorized by law to receive support payments"

52. Page 32, line 2.
Following: "order"
Insert: "as directed under this part"
Following: "or"
Strike: "appropriate"

53. Page 33, lines 2 through 4.
Following: "(1)" on line 2
Strike: remainder of line 2 through ". a" on line 4
Insert: "A"

54. Page 33, line 7.
Strike: "the department"
Insert: "a support enforcement agency of this state"

55. Page 33, line 8.
Strike: "department"
Insert: "support enforcement agency"

56. Page 33, lines 16 and 17.
Strike: "department" on line 16
Insert: "support enforcement agency"
Following: "to" on line 16
Strike: remainder of line 16 through "4" on line 17
Insert: "this part"

57. Page 34, line 22 through page 35, line 1.
Following: "state" on page 34, line 22
Strike: remainder of line 22 through "cases" on page 35, line 1
Renumber: subsequent subsections

58. Page 35, line 2.
Strike: "clerk of"
Insert: "department of social and rehabilitation services pursuant to 40-5-263 or to"
Following: "the"
Insert: "district"

59. Page 44, line 15.
Strike: "and enforce"

60. Page 44, lines 16 and 17.
Strike: "request or" on line 16
Following: "registration"
Strike: remainder of line 16 through "part" on line 17
Insert: ", for the purpose of enforcement"

61. Page 45, lines 4 through 9.
Following: "law" on line 4
Strike: remainder of line 4 through "1" on line 9

62. Page 45, line 10.
Following: line 9
Insert: "(3) A proceeding to determine parentage directed to:
(a) the department of social and rehabilitation services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and
(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

63. Page 45, line 25.
Following: ";"
Insert: "or"

64. Page 46, lines 2 through 5.
Strike: line 2 through "order" on line 5
Insert: "40-5-231"

65. Page 48, line 15.
Following: line 14
Insert: "Section 52. Section 40-4-210, MCA, is amended to read:

"40-4-210. Child support jurisdiction -- nonresident ~~parent~~ individual. A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident ~~parent~~ individual or the individual's guardian or conservator in a child support determination in the initial or modification decree if:

(1) the ~~nonresident parent has resided with the child in~~ individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(2) ~~(a)~~ the ~~nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and~~

~~(b) the other party to the marital relationship or~~ individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(3) the individual has resided with the child ~~resides~~ within this state;

~~(3)~~ (4) the child was ~~conceived or~~ adopted within this state when at least one parent was a resident; ~~or~~

(5) the individual resided in this state and provided

prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

~~(4)~~ (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction."

Section 53. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure that the parent or other person responsible pays for the care, support, or maintenance of a child if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the

Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part. ~~No~~ An obligee may not act to prejudice the rights of the department while ~~such~~ services are being provided.

(5) If child support enforcement services are being or have been provided under this part, ~~no~~ an agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

"40-5-226. Administrative hearing -- nature -- ~~place~~ -- time -- determinations -- failure to appear -- entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) ~~At the discretion of the hearing officer, the administrative hearing may be held:~~

~~(a) in the county of residence or other county convenient to the obligor or obligee; or~~

~~(b) in the county in which the department or any of its offices are located.~~

~~(3)~~ If a hearing is requested, it must be scheduled within 20 days.

~~(4)~~ (3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ the determination.

~~(5)~~ (4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

~~(6)~~ (5) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 54. Section 40-5-206, MCA, is amended to read:

notice.

~~(7)~~ (6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

~~(8)~~ (7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

~~(9)~~ (8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

~~(10)~~ (9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

~~(11)~~ (10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each

modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

~~(12)~~(11) For the purposes of income withholding provided for in subsection ~~(11)~~ (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

Section 55. Section 40-5-231, MCA, is amended to read:

"40-5-231. ~~Establishment of paternity -- jurisdiction~~ Jurisdiction and venue. (1) For purposes of an administrative action brought under ~~40-5-231 through 40-5-237~~ this part, personal jurisdiction is established in the department over any ~~person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Title~~

~~4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father~~ individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the ~~persons~~ individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a

hearing under ~~40-5-231 through 40-5-237~~ this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located."

Section 56. Section 40-5-263, MCA, is amended to read:

"40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be

made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement

services to a resident of this state, the director or ~~his~~ the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter."

Section 57. Section 40-6-109, MCA, is amended to read:

"40-6-109. Jurisdiction -- venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over ~~any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure~~ an individual or the individual's guardian or conservator, if:

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering an general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of ~~his~~ the father's estate have been or could be commenced.""
Renumber: subsequent sections

66. Page 49, line 3.
Following: line 2
Insert: "
NEW SECTION. Section 60. Coordination. If neither Senate Bill No. 217 nor __ Bill No. __ [LC 969] is passed and approved, then the bracketed language in [section 18(3) and section 21(4)] is void and the code commissioner shall make necessary changes in grammar."
Renumber: subsequent section

-END-

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 228 NUMBER 15

MOTION: HB 228 DO pass carried 15-3

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	3

Closing by Sponsor:
Rep. Toole said HB 335 needs to pass. He said the statute of limitation changes, tribal court jurisdiction, extending the period of disabled people to receive support, all need to be addressed.

Rep. Toole addressed the lien issue. He said there is a trend in law toward centralized liens. In 1991, the Uniform Commercial Code was revised, moving away from county filing toward centralized state filing to provide accessibility towards information regarding debts. He said economic decisions can then be made about property located in counties located other than where the request for information originates. He said $100 million of child support debt remains unpaid, and HB 335 would be one of the single most important tools to address this problem. He supported Sen. Blaylock's request for a subcommittee to look at this issue. He invited the bankers who did not testify in the House to participate in that process. He said he did not want to abandon the lien portions of HB 335.

HEARING ON HB 228

Opening Statement by Sponsor:
Rep. Toole, District 60, said HB 228 was a uniform act. He said the Uniform Reciprocal Enforcement Support Act (URESA) would be replaced by Uniform Interstate Family Support Act (UIFSA). HB 228 would allow counties to collect interstate child support debt. URESA, initiated in the 1970s, was no longer effective. URESA no longer dealt with multiple court orders issued from various courts in more than one state. No formal method exists to determine which states' court order should be enforced, or what credits should be given to the judgments issued in another state. He said the county attorneys of Montana have gradually stopped using URESA, since it is ineffective. The Conference of Commissioners on State Laws recognized it was a national problem and came up with UIFSA.

Proponents' Testimony:
Mary Ann Wellbank, Child Support Enforcement Division (CSED), supported HB 228. She said it would resolve a lot of the jurisdictional conflicts which are encountered where the obligor moves from state to state. A new order can be issued in each state and it is difficult to determine which order is in effect.

Opponents' Testimony:
None

Questions From Committee Members and Responses:
Sen. Towe asked how many states had adopted the new code. Mr. John McRae, SRS staff attorney, said it was finished during the past summer and that many states were looking at it, as was Montana. He did not give a specific number. He said there was a federal bill in Congress mandating that states adopt this act.

Sen. Towe asked if there were comments from the Uniform Code Commission that were available. Rep. Toole provided a letter from the National Conference of Commissioners on Uniform State Laws (Exhibit #3).

Closing by Sponsor:
Rep. Toole closed.

HEARING ON HB 638

Opening Statement by Sponsor:
Rep. Grimes, District 75, presented HB 638 on behalf of the Department of Family Services. He said HB 638 would limit the sentencing of youth to determinate lengths of time. He said most other states sentence youths to indeterminate sentences. Assigning youths to determinate lengths of time was important because: 1) From the youth's standpoint it allows more personal and independent approach concerning specific needs for that youth. A youth may be assigned to 10 months, but a drug rehab program may take 11 or 12 months, and 2) A youth may complete rehabilitation early and not be able to be shifted to a different program because of the determinate sentence; that is a disservice to the youth. He said determinate sentences would also help in the budgeting process. He said HB 638 dealt with problems that were not widespread, but significant nonetheless.

Rep. Grimes said HB 638 could avoid possible future litigation concerning sentencing mentally ill youth to Pine Hills. He said there were more appropriate ways to deal with mentally ill youth.

Proponents' Testimony:
Al Davis, Administrator, Juvenile Corrections Divisions, supported HB 638 by distributed testimony (Exhibit #4) and synopsized the findings.

Ann Gilkey, Department of Family Services (DFS), submitted an amendment (Exhibit #5).

Jim Smith, Montana Juvenile Probation Officers Association, supported HB 638 in its current form, as amended in the House, and approved the DFS amendment.

Opponents' Testimony:
None

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-18-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	✓		
Senator Doherty	✓		
Senator Brown	✓		
Senator Crippen	✓		
Senator Grosfield	✓		
Senator Halligan	✓		
Senator Harp	✓		
Senator Towe	✓		
Senator Bartlett	✓		
Senator Franklin	✓		
Senator Blaylock	✓		
Senator Rye	✓		

FC8

Attach to each day's minutes

National Conference of Commissioners on Uniform State Laws
676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611-(312) 915-0195

John M. McCabe
Legislative Director

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-18-93
BILL NO. HB 228

February 2, 1993

Mr. John McCray
BY FAX
406-728-9245

Dear Mr. McCray:

RE: Uniform Interstate Family Support Act

I have been trying to put together a reasonable and rational approach to your concerns about the Uniform Interstate Family Support Act in Montana. To that end I had a telephone conference Saturday with Allen Rogers, who chairs the Uniform Law Commissioner Standing Committee on the Uniform Interstate Family Support Act. He agrees with me that the proposed amendments raise many significant problems and will create much mischief with interstate child support enforcement. At the same time, we agree that certain amendments to smooth over the interface between the Uniform Act and existing state law make sense in certain instances.

It would be a mistake to regard the Uniform Interstate Family Support Act as simply a replacement for URESA in whatever form it now exists in Montana. URESA merely bound the states into a system of reciprocating enforcement jurisdictions for child and spousal support orders. The new act does much more. It establishes fundamental jurisdiction for issuing a support order, however denominated. It provides some fundamental rules for sorting out jurisdiction to modify, with the end benefit of residing the power to modify in only one jurisdiction at a time. It then describes a system whereby states can initiate and respond to all kinds of actions pertaining to child support, including establishing initial orders, modifying initial orders, and establishing parentage. It creates a kind of export-import system for all these kinds of actions that is far broader than anything envisioned before. It then establishes some minimum procedures for handling the export-import of these actions and for support orders. Lastly, it continues the rendition provisions that are part of URESA.

If there is to be improvement in interstate child support enforcement practice in the United States, there will have to be real commitment to uniformity in every state. I think, for example, the fundamental rules for taking jurisdiction over these matters, and the rules for sorting out which jurisdiction may entertain modification, and when, must be absolutely uniform. On the procedural side, there must be sufficient uniformity for states to be able to work with each other, even with differing systems of

administering and adjudicating child support actions. However, resolution of conflicts or misfits with existing procedural law that is already in place in a jurisdiction does not necessarily defeat uniformity. Such an approach is likely to conform to whatever standards of compliance Congress deems essential when it passes the next round of mandates.

I have looked at Title 40, chapter 5, and I do not perceive any serious conflicts, although there are some reconciliations that appear to me to be in order. To assure fit, between interstate and local law, we also have the annotations available to us to explain how they fit together.

Much is accomplished by existing provisions. The bill clearly designates the Department and the District Court as tribunals. So the Department, clearly, can act as an initiating and responding tribunal - it participates in the broad interstate reach of this act. Section 502 (Section 34 in H.B. 228) preserves local administrative law. Given these sections, I suggest the following:

1. Section 304 (Section 18 in H.B. 228) governs the duties of an initiating tribunal. I suggest this new paragraph:

"(4) The Department is the initiating tribunal for any action or proceeding that may be brought under 40-5-201 through 40-5-273. Otherwise, the District Court is the initiating tribunal.

2. Section 305 (Section 19 in H.B. 228) of the Uniform Act describes the powers of a responding tribunal. I have specific language to suggest:

"(4) A petition or comparable pleading directed to the Department of Social and Rehabilitative Services from an initiating state is subject to 40-5-263."

This language avoids the ambiguity that exists in the language that you suggest. Title IV-D of the Social Security Act, itself, does not produce petitions or pleadings of any kind. Either state courts or administrative agencies, or both, produce the petitions or pleadings. Much of the state law under which petitions or pleadings are generated is there because of the federal mandates embodied in Title IV-D, but the state courts or agencies produce the proceedings and orders under state law.

Although Title 40, Part 5 uses the terminology of IV-D referral, that term is never defined. The closest any provision comes to defining such a referral is 40-5-263, itself. In that provision, referrals that are administrative and that are URESA petitions are essentially equated. Either or both can be filed with the Department. This paragraph, itself, does not recognize

EXHIBIT 3
DATE 3-18-93
HB 228

the dichotomy implied in the use of this language. Actually, there is no child support award that is not in some way subject to the federal mandates.

The language I suggest uses the UIFSA terminology of initiating state and petitions or comparable pleadings that appear in Montana, as the responding state. It makes it clear that such petitions or comparable pleadings are to be administered in accordance with the Department's obligations as set out in 40-5-263. This specific language conforms to the general requirements of Section 502 (Sec. 34 of H.B. 228).

3. Section 307 (Sec. 21 of H.B. 228) governs duties of a support enforcement agency. It is in this section that I would declare the Department's status under UIFSA. I would add this paragraph:

"(4) For the purposes of this Part, the Department of Social and Rehabilitative Services is the support enforcement agency for this state as provided in 40-5-201 through 40-5-273. All the provisions of this part must be interpreted as supplemental to and cumulative with the powers and duties of the Department of Social and Rehabilitative Services under those provisions. Otherwise, the county attorney in the county in which an action must be filed is the support enforcement agency."

The major reason for providing this language is to settle completely, the Department's role in Montana with respect to this legislation. The Department has a dual role, actually, as a tribunal and as a support enforcement agency in 40-5-201 through 40-5-273. Its status as a tribunal is established in Section 102 (Sec. 3 of H.B. 228) for the purposes of UIFSA. It makes sense to me to establish it, also, explicitly, as a support enforcement agency for Montana in UIFSA. By doing that we wash away any concern about who directs what to whom under UIFSA in Montana.

County attorneys are also support enforcement agencies in cases in which they are involved. However, they are not tribunals. The District Court is.

4. Section 310 (Sec. 22 of H.B. 228) provides for the duties of a state enforcement agency. The Department also has obligations under both 40-5-206 and 40-5-263, although I do not see any patent conflict between Section 310 and either of the existing Montana provisions. For that reason, I would suggest a Montana comment to be placed in the Annotations, as follows:

"This section continues and supplements the obligations of the Department under 40-5-206 and 40-5-263. These provisions require the Department to maintain a central unit to act as a registry for information used in child support enforcement, and as

a registry for support orders and other proceedings directed to the Department from out-of-state, for which there is Montana jurisdiction over a party. Included is the explicit requirement that the Department locate obligors in interstate proceedings. The obligations of this section have been adopted to provide a uniform scheme of fulfilling these obligations, and to provide some common obligations between states, as part of the Uniform Interstate Family Support Act. This section under this part, and 40-5-206 and 40-5-263 should then be read as consistent with each other, and as cumulative provisions."

5. Section 313 (Section 27 in H.B.228) governs fees and costs in proceedings under UIFSA. I do not detect any patent conflict with 40-5-210. The Department, however, is required to maintain a standardized schedule of fees, which appear to be applicable to all child support proceedings. I suggest adding this paragraph to Section 27:

"(4) The standardized schedule of fees established by the Department under 40-5-210 shall be conclusive in any action under this section. Any fees or costs recoverable under paragraph (2) that are not included in the standardized schedules are recoverable under paragraph (2)."

This language should clarify any problems that might arise in reading these two sections together.

6. Section 602(a) (Sec. 37 in H.B. 228) should read, as follows:

"A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the Department of Social and Rehabilitative Services, pursuant to 40-5-263, or to the District Court in this State:"

This amendment makes it clear that registration can take place in either tribunal, exactly as is the case under current Montana law. The advantage under this provision is that registration requirements are the same for each tribunal. If there are different registration requirements in the same jurisdiction, that will simply raise the cost and delay of enforcement and hinder out-of-state efforts to enforce child support in Montana.

7. Section 701 (Sec. 48 in H.B. 228) governs the flow of parentage proceedings. Allen and I did not have any conceptual problem with the idea of amending this section to clarify the direction parentage proceedings must take in Montana, but we did have trouble with your language. Therefore, I suggest substituting this language:

EXHIBIT 3
DATE 3-18-93
HB 228

"(3) A proceeding to determine parentage directed to the Department of Social and Rehabilitative Services from an initiating state pursuant to this part and 40-5-263 is subject to 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable, and a proceeding to determine parentage directed a District Court from an initiating state is subject to Title 40, chapter 6, part 1."

The problem with your proposed language, aside from the ambiguous use of the IV-D language, is that it provides conflict between this section and the parentage provisions in 40-5-231 through 40-5-237. A literal reading of your amendment would raise the possibility that an alleged father could continue to deny paternity in an action under these sections, which would require a petition to the District Court under Title 40, chapter 6, part 1, which is the Uniform Parentage Act. Could he then use your language to assert that Title 40, chapter 6, part 1 would not apply to him? There is no sense in inviting patent conflict. It is better to be specific and give precise traffic directions.

8. I would strongly recommend that 40-5-272(2)(b), the jurisdictional provisions of Title 40, chapter 6, part 1 (I apologize for not having the precise cite on hand), and 40-4-210, all be amended to incorporate Section 201 (Section 5 of H.B. 228). These are all jurisdictional sections pertaining to child support and parentage. 40-4-210 is the long arm precursor to Section 201. It comes from the Uniform Marriage and Divorce Act. Section 201 is broader than any of these jurisdictional provisions, and there ought to be consistency between all of them. There are no conflicts to be resolved here. Section 201 incorporates the relevant jurisdictional concepts in all these sections. But achieving consistency between all these provisions is desirable.

These seem to me to be the major concerns in reconciliation of the Uniform Act with existing law. Having said that, let me give you our collective thoughts on the amendments that you have proposed:

1. Section 2(7). This amendment does not appear to make any substantive difference, but we view it as unnecessary. This is a definition, and is meant to assure identification of the term consistently with local law. You can add the rest, but it does not appear to disturb the basic meaning, unless there can be a wage withholding order in another jurisdiction that is not consistent with local law.

2. Section 2(8). The language as used does not make sense, and you are already aware of my objection to the IV-D language, but those objections could easily be remedied by this alternative, "including any proceeding initiated by the Department of Social and Rehabilitative Services under 40-5-201 to 40-5-273." However, with

the proposed amendments to clarify the role of the Department, this language is not necessary.

3. Section 2(13)(b) and (c). Allen pointed out to me that this makes the Department an obligee in every case, even when there is no legitimate basis to make the Department a party. It could include a case in which the Department is merely asked to help find an obligor. Even the existing statutes contemplate no such status for the Department. This is overreaching on the part of the Department. Also, does a child receive services or the custodial parent? The uniform definition describes accurately the justifiable position of an administrative agency providing child support services.

4. Section 2(15). Does this mean that the county attorney cannot bring a rendition action when an initiating tribunal petitions the Department for any purpose? Also, since Title IV-D has a relationship to almost every child support action, does this mean that the county attorney has no responsibilities under this act? This is a general definition, and is applicable in those sections of the act in which the term is used. There is nothing in this act that allows county attorneys to bring actions under the provisions of law pertaining to the Department, and vice versa. This amendment merely muddies and confuses a perfectly clear term. I should also note that the term "prosecuting attorney" is the operative term in the Montana's URESA. I doubt there has been any confusion during the many years URESA has been used in Montana.

5. Section 2(18). Same comment as 2. above.

6. Section 22(b). I think that my proposed amendments take care of this problem.

7. Section 2(23). It seems clear to us that, in this general definition, that "monetary support" and "health care" are enough to signify the contents of a support order. Nobody is going to be able to claim that a document identified as a support order is going to be denied that status if it contains provisions relating to health insurance, just because health insurance is not specifically in this definition. Again, this is a general definition, sufficient as it stands.

8. Section 3. I think this is covered in my proposed amendments.

9. Section 8(3). This does no harm, but adds nothing substantive. This states the obvious.

10. Section 9(3) and (4). These amendments are serious and damaging distortions of the principles of continuing, exclusive jurisdiction. These amendments invite collateral attack upon

EXHIBIT 3
3-18-93
HB 228

support orders on the basis of arcane questions of jurisdiction, not in the state in which jurisdiction is at issue, but in an entirely different state. This is a good way to make sure that every modification will be contested, if there is an effort to enforce the modified order in a state other than the issuing state.

The only proper standard under paragraph (3) is modification in a state with a law substantially similar to this act, and continuing, exclusive jurisdiction in a state with a law substantially similar to this act for paragraph (4).

These are provisions that require absolute uniformity if the interstate system is to function.

11. Section 10(2). This amendment misstates the case. A tribunal does not have to have continuing, exclusive jurisdiction to enforce a support order. It only needs to have continuing, exclusive jurisdiction to modify an order. The restatement of the uniform act language tends to make enforcement possible only if there is continuing, exclusive jurisdiction. That would cripple efforts to enforce out-of-state orders in Montana. We need to have uniformity with respect to this section.

12. Section 10(3). The same as above.

13. Section 13(a) and (b). The addition of the word "a child" in these two paragraphs appears to do no harm, but is merely redundant. "Obligee" is already defined as someone to whom a duty of support is owed.

14. Section 15(4). Substituting "obligee" for "individual" takes away obligor rights. That is a serious constitutional and policy problem, one that violates federal law. This is a provision which must remain uniform.

15. Section 19. Already covered in my proposed amendments.

16. Section 21(2). Sections 307 (b)(4) and (5) have been omitted. These are notice and communications requirements to petitioners for whom the Department as support enforcement agency is providing support services. The Department ought to be embarrassed about refusing these simple communications with the people that are allegedly being served.

17. Section 21(3). We cannot fathom why anybody would take out "or negate" in this paragraph. The objective here is to leave the question of attorney-client and fiduciary relationships absolutely neutral. Why is that not appropriate? It would be unconscionable to have an interpretation of this section that abrogated an existing relationship.

important to have specific enforcement of orders. The use of the word "appropriate" here, again, has the same effect as noted above.

27. Section 34(1). There is a serious and embarrassing problem in the language limiting this section to persons receiving services from the Department. Any out-of-state obligee trying to enforce an order against an obligor in the state of Montana would be virtually cut off from using this provision. The issue, again, is access to enforcement. The Department ought to be a little embarrassed to suggest this limitation.

28. Section 37. I have suggested alternative language in my proposed amendments.

29. Section 47. I think that the change here was motivated by the changes in Section 9. Those changes are unacceptable, and the amendatory language here is totally unnecessary.

30. Section 48. I have other suggested language, above.

These are my comments. Thanks for your kind attention.

Sincerely,

John M. McCabe
Legislative Director

cc: Allan G. Rodgers
James E. Vidal

restored in HB 216. Chair Yellowtail said yes, plus an additional amendment.

Vote:
The Be Concurred In As Amended motion for HB 216 CARRIED by a Roll Call Vote.

EXECUTIVE ACTION ON HB 228

Motion:
Senator Bartlett moved HB 228 BE CONCURRED IN.

Discussion:
Senator Towe told the Committee that HB 228 was drastically needed to unify the laws regarding modification and support. Senator Towe said the concept of HB 228 was excellent.

Vote:
The Be Concurred In motion for HB 228 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 278

Motion/Vote:
Senator Bartlett moved HB 278 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 525

Motion:
Senator Bartlett moved to amend HB 525. (Exhibit #3)

Discussion:
Senator Bartlett explained amendment HB052502.ADB.

Senator Towe asked Senator Bartlett why the amount of money received by gifts, grants, and donations was limited. Senator Bartlett said the intention was to have at least a minimum of $25,000. Senator Bartlett said if there was a problem with the language it could be addressed with an amendment.

Chair Yellowtail asked Ms. Lane about the language. Ms. Lane said it is clear that the language says not to accept gifts in excess of $25,000.

Chair Yellowtail said the intent was to not accept less than

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-26-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 228 (third reading copy -- blue), respectfully report that House Bill No. 228 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

Halligan
Senator Carrying Bill

681516SC.San